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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,441	08/14/2003	Rene Francois Monet	BR6.P38	2481

21792 7590 02/03/2005

STRATTON BALLEW
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EXAMINER

HWU, JUNE

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/642,441	MONET, RENE FRANCOIS	
	Examiner	Art Unit	
	June Hwu	1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

The amendment filed November 8, 2004 has been acknowledged.

It is noted that there is a spelling error on the title of the employed color chart on page 3, line 4.

The text of those sections of Title 35, U.S. Code not included in this action can be found in the prior Office action.

Drawings

The drawings have been approved.

35 USC § 102

The rejection of claim 1 under 35 U.S.C. 102 (b) is withdrawn in view of Applicant's amendment.

Claim Rejections - 35 USC § 112

Claim 1 remains rejected under U.S.C. 112, first and second paragraphs, for reasons stated in the prior Office actions (dated August 6, 2004, pages 3-7) and as are detailed below.

Response to Arguments

Applicant argues that the written description in the disclosure is reasonably complete in accordance to 37 C.F.R. 1.163. In addition, the completeness of the description does not include every quantifiable feature of the plant. This argument has been fully considered, however, is not persuasive because 37 C.F.R. 1.163(a) states, "The specification must contain

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as full and complete a disclosure as possible of the plant and the characteristics thereof..." thus the entire plant, not just some of the characteristics must be described. Moreover, 35 U.S.C. 162 also states that the description must be "as complete as is reasonably possible." See also MPEP 1605.

Applicant argues that a detailed botanical description in the disclosure may appeal to the botanist, patent examiner or patent applicant but does not have any influence to prevent a plant patent from an infringer. This argument has been fully considered, however, is not persuasive because the patentee must first compare his or her plant from the infringer's plant. If the descriptions in the disclosure were lacking or vague of certain characteristics, then it would be difficult to distinguish the patented plant from the infringer's plant. Patent prosecution and infringement are separate issues. The standard for prosecution rests on the rules of 37 CFR 1.163. 37 CFR 1.163 further states "...characteristics thereof that distinguish the same over related known varieties, and its antecedents..."

Applicant argues that a description of variable characteristics does not aid in identifying the plant but further presents vague and ambiguous information. This argument has been fully considered, however, is not persuasive because variable characteristics and ranges would strengthen the disclosure rather than limiting it to an exact size.

Applicant's amendment dated November 8, 2004 failed to address the following grounds of rejection:

A. Applicant has not set forth in the specification how the instant cultivar is distinguished from its parents. 37 CFR 1.163 (a) states, "...the characteristics thereof that distinguish the same over related known varieties, **and its antecedents...**" Correction is required.

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B. Applicant has not set forth in the specification a botanical description of the leaf stipules' size, shape and color designation. If available, correction is necessary.

C. Applicant has not set forth in the specification the color designation of the branch anthocyanin.

D. Applicant has not set forth in the specification a botanical description of the leaf glands' size and color designation. If available, correction is necessary.

E. Applicant has not set forth in the specification the size and color designation with reference to the employed color chart of the pit cavity.

F. Applicant has not set forth in the specification a botanical description of the stone such as length, width, base and apex shapes and surface texture.

G. Applicant has not set forth in the specification a botanical description of the kernel such as size, shape and color designation.

Applicant's amendment dated November 8, 2004 failed to address the following new grounds of rejection:

H. Page 3, line 17, the recitation "166DA" is unclear regarding the color designation of the trunk. Clarification and correction are necessary.

Conclusion

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No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

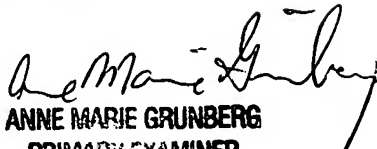
Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to June Hwu whose telephone number is (571) 272-0977. The Examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached on (571) 272-0811. The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JH


ANNE MARIE GRUNBERG
PRIMARY EXAMINER